

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/20/2012

Action Requested By:
Landscape
Management

Agenda Item Type
Resolution

Subject Matter:

Agreement with OMI, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with OMI, Inc. for the preparation and submission of a mitigation banking instrument at Goldsmith Schiffman Nature Preserve, Phase II

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Agreement is needed for the preparation and submission of a mitigation banking instrument for the development of a wetland mitigation bank at the Goldsmith Schiffman Nature Preserve, Phase II. Account No. 23-7200-0301-8406

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Joy H. McKee

Date: 12-13-12

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Landscape Management** Council Meeting Date: **12/20/2012**

Department Contact: **Joy McKee**

Phone # **256-564-8030**

Contract or Agreement: **Professional Services**

Document Name: **OMI-Goldsmith Schiffman Mitigation Banking Instrument**

City Obligation Amount: **\$49,712.00**

Total Project Budget:

Uncommitted Account Balance:

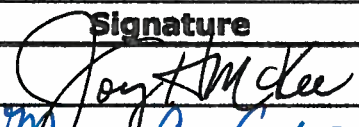



Account Number: **23-7200-0301-8406**

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		12-13-12
2) Legal		12-17-12
3) Finance 		12/18/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an Agreement by and between the City of Huntsville and OMI, Inc. on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as "Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and OMI, Inc. for the presentation of a mitigation banking instrument for the development of a wetland mitigation bank at the Goldsmith-Schiffman Nature Preserve, Phase II" consisting of thirteen (13) pages including Exhibit "A" and the date of December 20, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 20th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 20th day of December, 2012.

Mayor of the City of Huntsville,
Alabama

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE AND
OMI, INC. FOR THE COMPLETION OF PHASE II OF
A MITIGATION BANKING INSTRUMENT
FOR THE DEVELOPMENT OF A
WETLAND MITIGATION BANK AT THE
GOLDSMITH-SCHIFFMAN NATURE PRESERVE

STATE OF ALABAMA)
)
COUNTY OF MADISON)

This Agreement is made this 20th day of December, 2012, between OMI, Inc. (hereinafter referred to as "OMI"), and the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as "City").

RECITALS

WHEREAS, the City of Huntsville desires to utilize that certain tract of property known as the Goldsmith-Schiffman Nature Preserve (the "Preserve") as a wetland and stream mitigation bank; and

WHEREAS, the creation of said mitigation bank requires the preparation and submission of a Mitigation Banking Instrument (MBI) to the United States Army Corps of Engineers (Corps); and

WHEREAS, OMI has previously completed Phase I of the MBI prospectus for the Preserve; and

WHEREAS, the MBI must now be approved by an Interagency Review Team ("IRT"); and

WHEREAS, OMI has the unique expertise necessary to interact with the IRT in furtherance of the goal of the approval by the Corps of the Preserve as a Wetland Mitigation Bank.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties do hereby agree as follows, to -wit:

ARTICLE 1: Statement of Work: OMI hereby agrees to provide the following services to the City of Huntsville:

OMI will build on the work it performed for Phase I of the MBI process. OMI has previously completed a Mitigation Banking Instrument Prospectus for the Preserve. The Prospectus was published on the Corps' web site for a thirty day public notice period. The public notice period expired on August 10, 2012. OMI also completed the following tasks during Phase I: 1) Preliminary archeological survey conducted September, 2009; 2) Groundwater monitoring from May 2011 to March 2012; and 3) Survey of the Tupelo Gum Tree Stand.

The specific tasks to be performed by OMI during Phase II include the following:

- 1) Completion and delivery of construction drawings to include a) grading plans; b) erosion control Plans; and c) Planting Plan.
- 2) Phase I Archeology Survey as required by the Corps.
- 3) Groundwater monitoring bi-monthly during the period of performance of this agreement.
- 4) Setting up vegetation reference plots.
- 5) Surveying as required by the Corps.
- 6) Providing an appropriate response to the comments from the publication of the Prospectus on the Corps' web site.
- 7) Meeting and site visits with the Core.

ARTICLE 2: Period of Performance and Schedule: The period of performance of the contract shall commence within thirty (30) days of the execution of this Agreement, and shall extend until the Work is completed. The work shall be completed within twelve (12) months from the commencement of the period of performance.

ARTICLE 3: Contract Price: In consideration of the services rendered hereunder, the City shall pay to OMI for the work performed pursuant to the Statement of Work the sum of Forty-nine Thousand Seven Hundred and Twelve Dollars (\$49,712.00). The Contract Price is based upon the following fee schedule:

<u>Task</u>	<u>Fee</u>
Construction Drawings	\$15,500.00
Phase I Archeology Survey	\$10,462.00
Groundwater Monitoring and	
Construction of the Vegetation Reference Plots	\$8,000.00
Response to Comments, Meeting and Site Visits	
With the USACE	\$5,000.00

Phase I Tasks Completed but not Invoiced

Preliminary Archeology Survey	\$2,200.00
Survey of Tupelo Gum Tree Stand	\$2,310.00
<u>Groundwater Monitoring</u>	<u>\$6,240.00</u>
Total Fee	\$49,712.00

OMI shall invoice the City on a monthly basis for the services provided that month. The City shall pay OMI within thirty (30) days from the date of receipt of the monthly invoice from OMI.

ARTICLE 4: OMI Performing as an Independent Contractor: In the performance of this work it is understood between the parties that OMI and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. OMI shall have no authority to obligate the City to any indebtedness or other obligation.

ARTICLE 5: Notices: All notices to be delivered hereunder shall be delivered to the other party by placing the same in the United States Mail, First Class postage prepaid, by prepaid overnight service through Federal Express or United Parcel Services or by hand delivery, to the addressee, addressed as follows:

City Of Huntsville
Attention: Joy McKee
P.O. Box 308
Huntsville, Alabama 35804

OMI, Inc.
Attention: Keith Mandel
5151 Research Drive, NW
Huntsville, Alabama 35805

ARTICLE 6: Entire Agreement: The contract between the City and OMI consists of this written Agreement and any documents, drawings or attachments furnished by the City and referenced herein. This written Agreement constitutes the entire agreement between the City and OMI with reference to the Scope of Work delineated within. Except to the extent specifically excluded herein, this Contract supersedes any bid or proposals documents and all prior written or oral communication, representation and negotiations, if any, between the City and OMI.

ARTICLE 7: No Privity of Contract with Third Parties: Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than OMI.

ARTICLE 8: No Waiver Clause: The failure of the City to insist in one or more instances upon the performance of any term of this Contract is not a waiver of the City's

right to future performance of such terms, and OMI's obligations for future performance of such shall continue in effect.

ARTICLE 9: Insurance and Indemnification Requirements: OMI shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. OMI shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by OMI, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

Commercial General Liability

Products and Completed Operations

Contractual

Personal Injury

Broad Form Property Damage

2. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. For purposes of this provision, reasonable economic terms shall mean that such coverage is carried by at least 25% of the firms within the discipline of concern in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial

insurance company or a recognized self-insurance fund authorized before the State of Alabama Board of Industrial Relations. The Workers' Compensation Insurance carrier or self-insured fund shall waive all subrogation rights against the City of Huntsville, its officers, employees, agents and specified volunteers.

5. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 1,000,000 General Aggregate Limit
\$ 500,000 Products - Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury
\$ 500,000 Each Occurrence

2. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 1,000,000 Per Claim

3. Automobile Liability:

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

4. Workers' Compensation:

As Required by the State of Alabama Statute

5. Employers Liability:

\$ 100,000 Bodily Injury by Accident or Disease
\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its officers, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of OMI for products used by and completed operations of OMI; or automobiles owned, leased, hired or borrowed by OMI. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or specified volunteers. Additional Insured status on the CGL shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide coverage as per this Agreement.

b. OMI's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of OMI's insurance and shall not contribute to it.

c. OMI's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. OMI is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than B+ V.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and OMI shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be

signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

OMI shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. INTELLECTUAL PROPERTY RIGHTS:

OMI agrees to indemnify, hold harmless and defend the City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products delivered by and/or Services performed by OMI pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties. This indemnification is contingent upon City providing prompt written notice of such a claim to OMI, and granting OMI the sole right to defend such claim. In the event of any infringement or claimed infringement, OMI, in its sole discretion, shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

H. HOLD HARMLESS AGREEMENT:

OMI, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, court awarded attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is directly attributable to personal injury, including bodily injury or death, or to injury to or destruction of tangible property, therefrom, and (2) is caused by any negligent act or omission of OMI or any of its consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

ARTICLE 10: This agreement shall be governed by the laws of the State of Alabama. Venue of any action to enforce the terms of this agreement shall be in the state or federal courts of Madison County, Alabama.

ARTICLE 11: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

ARTICLE 12: When a word, term or phrase is used in this Contract, it shall be interpreted or construed. First, as defined herein; second, if not defined, according to its generally accepted meaning the Contractual industry; and third, if there is no generally accepted meaning in the Contractual industry, according to its common and customary usage.

ARTICLE 13: The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

ARTICLE 14: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

ARTICLE 15: Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

ARTICLE 16: Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

ARTICLE 17: OMI shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the immediately preceding sentence, the City and OMI, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

ARTICLE 18: Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE 19: OMI shall obtain the City's written consent before placing any subcontract for furnishing any of the work called for in this contract. Consent by the City to any subcontract shall not constitute approval of the acceptability of any subcontract terms or conditions, acceptability of any subcontract price or of any amount paid under any subcontract, nor relieve OMI of any responsibility for performing this contract.

ARTICLE 20: The Services will comply with any and all applicable federal, state, and local laws as the same exist and may be amended from time to time.

ARTICLE 21: In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with

reference to the subject matter of this contract, no matter how remote. This nondiscrimination provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

ARTICLE 22: Order of Preference of Contract Documents: In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control, and OMI is deemed to have based its estimate of performing the work upon the order of precedence as set forth below. Interpretations shall be based upon the following order of precedence: 1) this Agreement; 2) OMI's proposal attached hereto as Exhibit "A".

[Signatures to follow on next page]

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

OMI, INC.

Attest:

Lameka Carter

By : Keith J. Mandel
Its: Vice President

CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

Charles E. Hagood
Its: Clerk-Treasurer

By: _____
Tommy Battle
Its: Mayor

OMI, Inc.

October 23, 2012

City of Huntsville
Landscape Management Division
PO Box 308
Huntsville, AL 35804

ATTN: Ms. Joy McKee

SUBJECT: Proposal for Goldsmith-Schiffman Wildlife
Sanctuary Mitigation Banking Instrument
Phase II
Highway 431
Huntsville, AL
OMI Proposal No. P-3932

Ladies and Gentlemen:

OMI, Inc. is pleased to present this proposal for providing services for the referenced project. Preparatory to this letter, OMI has completed Phase I of the Goldsmith Schiffman Wildlife Sanctuary (GSWS) Mitigation Banking Instrument (MBI) Prospectus. Phase I of this project was to complete the prospectus and have it published on the United States Army Corps of Engineers (USACE) web site for a thirty day public notice. The public notice expired on August 10, 2012. Phase II is described below in Scope of Services Section. This proposal describes the project information and presents a planned scope of work, fee consideration, and a schedule for performing the work.

PROJECT INFORMATION

The subject property consists of four tracts of land: Goldsmith-Schiffman tract, the Ellett tract, the Bennett tract and the Branum tract. Together, the four tracts comprise approximately 447 acres. The Flint River flows along the eastern boundary and tributaries to the Flint River flow throughout the eastern portion of the site. The property is wooded with several farmed fields to the south and one to the north. OMI understands the City of Huntsville desires to utilize this property as a

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wetland mitigation bank. The property will also serve as a wildlife sanctuary with recreational areas and hiking trails.

SCOPE OF SERVICES

The mitigation bank will be supported by a written MBI and developed in coordination with the Interagency Review Team (IRT). The IRT has the final approval of the MBI. The MBI will describe the physical and legal characteristics of the mitigation bank and how it will be established and operated. A general outline of the tasks that will be completed to support the next phase of the GSWS Wetland Bank:

1. Construction Drawings to include;
 - a. Grading Plans,
 - b. Erosion Control Plans,
 - c. Planting Plan.
2. Phase I Archeology Survey as required by the USACE;
3. Groundwater Monitoring Bi-Monthly;
4. Setting up Vegetation Reference Plots
5. Surveying;
6. Response to Comments from the Public Notice;
7. Meetings and site visits with the USACE;

In addition, the following tasks were completed during Phase I as needed and/or required by the USACE:

1. Preliminary Archeological Survey Conducted September 2009;
2. Groundwater Monitoring from May 2011 to March 2012 ;
3. Survey of the Tupelo Gum Tree Stand.

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COST ESTIMATE AND SCHEDULE

OMI, Inc. estimates a cost of \$49,712.00 for the tasks needed to complete Phase II of the GSWS Wetland Bank. According to the present schedule, OMI can begin the working of the property upon receiving written authorization to perform the outlined scope of services contained herewith. About three to four months will be required to complete the tasks of Phase II. The fee is itemized below:

<u>Task</u>	<u>Fee</u>
Construction Drawings	\$15,500.00
Phase I Archeology Survey	\$10,462.00
Groundwater Monitoring and	
Construction of the Vegetation Reference Plots	\$8,000.00
Response to Comments, Meeting and Site Visits	
With the USACE	\$5,000.00
<u>Phase I Tasks Completed but not Invoiced</u>	
Preliminary Archeology Survey	\$2,200.00
Survey of Tupelo Gum Tree Stand	\$2,310.00
<u>Groundwater Monitoring</u>	<u>\$6,240.00</u>
Total Fee	\$49,712.00

AUTHORIZATION

To authorize OMI, Inc. to provide these services, please execute and return the attached Work Authorization Sheet. Please note any special instructions or information such as billing or site access requirements on this Work Authorization Sheet. Also enclosed with this proposal are General Conditions which discuss such items as right-of-entry, insurance, and invoicing. These Conditions are considered an integral part of this proposal.


OMI, Inc.

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OMI, Inc. appreciates the opportunity to provide this proposal for services to the City of Huntsville
Please direct any questions regarding this proposal to the undersigned.

Respectfully submitted,
OMI, Inc.



Amy H. Werkheiser
Environmental Scientist/Ecologist



Keith J. Mandel, P. E.
Vice President

Attachments: General Conditions
Work Authorization Sheet
Site Access Authorization